

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

REPUBLIC RESTAURANT INC.,)
Plaintiff,)
v.) CIVIL ACTION
HYDAN WASHINGTON STREET,) NO. 03-12649-NMG
INC., d/b/a PHO REPUBLIQUE and)
JACK BARDY)
Defendant.)

**DECLARATION OF MERTON E. THOMPSON IN SUPPORT OF OPPOSITION
TO MOTION TO DISMISS WITHOUT PREJUDICE AND CROSS-MOTION
FOR A DISMISSAL UPON CONDITIONS**

I, Merton Thompson, counsel for defendant HYDAN WASHINGTON STREET INC., d/b/a PHO REPUBLIQUE and JACK BARDY (collectively "Pho Republique") hereby declare, under the pains and penalties of perjury:

- 1) Attached as Exhibit A is a true and correct copy of the United States Patent and Trademark Office web site print-out of plaintiff's trademark registration.
- 2) Attached as Exhibit B is a true and correct copy of the United States District Court for the Northern District of Texas web site print-out of the docket for plaintiff's trademark litigation activity.
- 3) The hourly rate for my legal service is \$325.00 per hour.
- 3) Attorneys fees associated with the Answer, correspondence and case scheduling to date amount to \$3,500.

4) Attorneys fees associated with opposition to plaintiff's motion to dismiss amount to \$1,400.

/s/
Merton E. Thompson
(BBO# 637056)

BURNS & LEVINSON LLP
125 Summer Street
Boston, MA 02110
Telephone: (617) 345-3000
Facsimile: (617) 345-3299

Dated: July 22 2005

00944208

EXHIBIT A



United States Patent and Trademark Office

[Home](#) | [Site Index](#) | [Search](#) | [FAQ](#) | [Glossary](#) | [Guides](#) | [Contacts](#) | [eBusiness](#) | [eBiz alerts](#) | [News](#) | [Help](#)

Trademarks > Trademark Electronic Search System (TESS)

Trademark Electronic Search System(Tess)

TESS was last updated on Fri Jun 24 03:50:32 EDT 2005

[PTO Home](#) [TRADEMARK](#) [TESS HOME](#) [NEW USER](#) [STRUCTURED](#) [FREE FORM](#) [BROWSE DICT](#) [BOTTOM](#) [HELP](#) [Prev List](#)
[CURREN](#) [LIST](#) [NEXT LIST](#) [FIRST Doc](#) [Prev Doc](#) [Next Doc](#) [LAST Doc](#)

Please logout when you are done to release system resources allocated for you.

OR to record: **Record 4 out of 4**

(TARR contains current status, correspondence address and attorney of record for this mark. Use the "Back" button of the Internet Browser to return to TESS)



| | |
|---------------------------------|---|
| Word Mark | REPUBLIC |
| Goods and Services | IC 042, US 100 101, G & S: restaurant services. FIRST USE: 19951100. FIRST USE IN COMMERCE: 19951100 |
| Mark Drawing Code | (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS |
| Design Search Code | 010103 |
| Serial Number | 74732568 |
| Filing Date | September 18, 1995 |
| Current Filing Basis | 1A |
| Original Filing Basis | 1B |
| Published for Opposition | May 28, 1996 |
| Registration Number | 2067872 |
| Registration Date | June 3, 1997 |
| Owner | (REGISTRANT) Republic Restaurant Corp. CORPORATION NEW YORK 37A Union Square West New York NEW YORK 10003 |
| Attorney of Record | Leslie K. Mitchell |
| Type of Mark | SERVICE MARK |
| Register | PRINCIPAL |
| Affidavit Text | SECT 15. SECT 8 (6-YR). |
| Live/Dead Indicator | LIVE |

EXHIBIT B

CLOSED, JURY, RAMIREZ

**U.S. District Court
Northern District of Texas (Dallas)
CIVIL DOCKET FOR CASE #: 3:04-cv-01413**

Republic Restaurant Inc v. Noodle-O-1 Inc
Assigned to: Judge Sam A Lindsay
Cause: 15:1114 Trademark Infringement

Date Filed: 06/29/2004
Jury Demand: Defendant
Nature of Suit: 840 Trademark
Jurisdiction: Federal Question

Plaintiff

Republic Restaurant Inc

represented by **Sanford E Warren, Jr**
Winstead Sechrest & Minick - Dallas
5400 Renaissance Tower
1201 Elm St
Dallas, TX 75270
214/745-5400
Fax: 214/745-5390 FAX
Email: swarren@winstead.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

David L Odom
Winstead Sechrest & Minick - Dallas
5400 Renaissance Tower
1201 Elm St
Dallas, TX 75270
214/745-5716

Jeffrey M Tamarin
Reed Smith - New York
599 Lexington Ave
New York, NY 10022
212/521-5400

V.

Defendant

Noodle-O-1 Inc
doing business as
Pho Republic Restaurant

represented by **Dan Duncan Davison**
Fulbright & Jaworski
Texas Commerce Bank Tower
2200 Ross Ave
Suite 2800
Dallas, TX 75201-2784
214/855-8000
Fax: 214/855-8200 FAX
Email: ddavison@fulbright.com

**LEAD ATTORNEY
ATTORNEY TO BE NOTICED**

Dana C Jewell

Fulbright & Jaworski - Dallas
2200 Ross Ave
Suite 2800
Dallas, TX 75201-2784
214/855-8154

Provider

Herbert J Hammond

| Date Filed | # | Docket Text |
|------------|----|--|
| 06/29/2004 | 1 | Original COMPLAINT against Noodle-O-1 Inc (Filing fee \$150; Receipt number 208694), filed by Republic Restaurant Inc.(jrb,) (Entered: 06/30/2004) |
| 06/29/2004 | | ***Magistrate Judge Ramirez chosen by random selection to handle matters that may be referred in this case. (jrb,) (Entered: 06/30/2004) |
| 06/29/2004 | 2 | Summons Issued as to Noodle-O-1 Inc. (jrb,) (Entered: 07/01/2004) |
| 06/29/2004 | 3 | CERTIFICATE OF INTERESTED PERSONS/DISCLOSURE STATEMENT by Republic Restaurant Inc. (jrb,) (Entered: 07/01/2004) |
| 07/14/2004 | 4 | SUMMONS Returned Executed as to Noodle-O-1 Inc served on 6/30/2004, answer due 7/20/2004. (jrb,) (Entered: 07/15/2004) |
| 07/20/2004 | 5 | Original ANSWER to Complaint with Jury Demand by Noodle-O-1 Inc. (jrb,) (Entered: 07/21/2004) |
| 07/20/2004 | 6 | CERTIFICATE OF INTERESTED PERSONS/DISCLOSURE STATEMENT by Noodle-O-1 Inc. (jrb,) (Entered: 07/21/2004) |
| 07/22/2004 | 7 | ORDER Requiring Attorney Conference and Status Report. Joint Status Report due by 8/23/2004. (Signed by Judge Sam A Lindsay on 7/22/04) (jrb,) (Entered: 07/23/2004) |
| 07/29/2004 | 8 | Application and Order for Admission Pro Hac Vice by Jeffrey M Tamarin for Republic Restaurant Inc. (Mailed copy of order to attorney Jeffrey M Tamarin on 7/30/04.) (Signed by Judge Sam A Lindsay on 7/29/04) (cxb,) (Entered: 07/30/2004) |
| 08/20/2004 | 9 | Joint STATUS REPORT by Noodle-O-1 Inc, Republic Restaurant Inc. (jrb,) (Entered: 08/23/2004) |
| 08/25/2004 | 10 | SCHEDULING ORDER: Amended Pleadings due by 1/3/2005. Discovery due by 6/3/2005. This case is set for trial on this court's four-week docket beginning 10/3/2005 before Judge Sam A Lindsay. Pretrial Conference set for 9/30/2005 02:00 PM before Judge Sam A Lindsay. Joinder of Parties due by 1/3/2005. Motions due by 7/5/2005. Proposed |

| | | |
|------------|-----------|--|
| | | Pretrial Order due by 9/12/2005. Pretrial Materials due by 9/12/2005. See order for specifics. (Signed by Judge Sam A Lindsay on 8/25/04) (jrb,) (Entered: 08/26/2004) |
| 08/25/2004 | <u>11</u> | ORDER REFERRING CASE to ADR. Type of ADR: mediation. The parties are therefore directed to participate in mediation by 11/5/04. (Signed by Judge Sam A Lindsay on 8/25/04) (jrb,) (Entered: 08/26/2004) |
| 11/05/2004 | <u>12</u> | Joint MOTION for Extension of Time to Mediate by Noodle-O-1 Inc, Republic Restaurant Inc (jrb,) (Entered: 11/08/2004) |
| 11/09/2004 | <u>13</u> | ORDER granting <u>12</u> Motion to Extend Time. Deadline to participate in mediation is extended to 12/2/04. (Signed by Judge Sam A Lindsay on 11/9/04) (jrb,) (Entered: 11/10/2004) |
| 11/24/2004 | <u>14</u> | Joint Status Report and Joint MOTION to Further Extend Mediation Deadline by Noodle-O-1 Inc, Republic Restaurant Inc (jrb,) (Entered: 11/29/2004) |
| 11/24/2004 | | Joint STATUS REPORT by Noodle-O-1 Inc, Republic Restaurant Inc. (see #14 for image) (jrb,) (Entered: 11/29/2004) |
| 11/29/2004 | <u>15</u> | ORDER granting <u>14</u> Motion to Extend Time. The deadline to participate in mediation is extended to 1/5/05. (Signed by Judge Sam A Lindsay on 11/29/04) (jrb,) (Entered: 11/30/2004) |
| 01/04/2005 | <u>16</u> | ***UNFILED PER ORDER OF 1/5/05*** Joint MOTION to Further Extend Mediation Deadline by Republic Restaurant Inc, Noodle-O-1 Inc (jrb,) (Entered: 01/05/2005) |
| 01/05/2005 | <u>17</u> | Order Unfiling <u>16</u> MOTION to Extend Time filed by Republic Restaurant Inc, Noodle-O-1 Inc, due to the following deficiency: no original filed. (Signed by Judge Sam A Lindsay on 1/5/05) (jrb,) (Entered: 01/10/2005) |
| 01/11/2005 | <u>18</u> | Joint MOTION to Further Extend Mediation Deadline by Republic Restaurant Inc, Noodle-O-1 Inc (jrb,) (Entered: 01/12/2005) |
| 01/12/2005 | <u>19</u> | ORDER granting <u>18</u> Motion to Extend Time. The deadline to participate in mediation is extended to 2/4/05. (Signed by Judge Sam A Lindsay on 1/12/05) (jrb,) (Entered: 01/13/2005) |
| 02/02/2005 | <u>20</u> | Joint MOTION to Further Extend Mediation Deadline by Republic Restaurant Inc, Noodle-O-1 Inc (jrb,) (Entered: 02/03/2005) |
| 02/10/2005 | <u>21</u> | ORDER granting <u>20</u> Motion to Extend Time. Ordered that the plaintiff's and dft's deadline to participate in mediation is extended to April 1, 2005. (Signed by Judge Sam A Lindsay on 2/10/05) (jrb,) (Entered: 02/11/2005) |
| 04/08/2005 | <u>22</u> | Mediator's Report to the Court Concerning Mediation/Alternative Dispute Resolution Summary filed by Herbert J Hammond. Prv Fee: \$3200.00. Disposition: In ADR.(jrb,) (Entered: 04/11/2005) |

| | | |
|------------|----|--|
| 04/12/2005 | 23 | Order Directing Administrative Closure. The parties are therefore directed to file the necessary dismissal papers by 5/13/05. (Signed by Judge Sam A Lindsay on 4/12/05) (jrb,) (Entered: 04/12/2005) |
| 05/13/2005 | 24 | Stipulated Order of Dismissal Without Prejudice. The parties shall bear their own attorney's fees and costs. (Signed by Judge Sam A Lindsay on 5/13/05) (jrb,) (Entered: 05/13/2005) |

| | | | |
|-----------------------------|---------------|------------------|---------------|
| PACER Service Center | | | |
| Transaction Receipt | | | |
| 06/24/2005 12:31:58 | | | |
| PACER Login: | bl0019 | Client Code: | 26301.0 |
| Description: | Docket Report | Search Criteria: | 3:04-cv-01413 |
| Billable Pages: | 2 | Cost: | 0.16 |